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December 4, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 8, 2005

Case Number: TSO-0191

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to possess an access authorization under the Department of Energy (DOE) regulations entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.^{2/} After reviewing the evidence before me I find the Individual's access authorization should be restored.

I. Background

Several workplace incidents and an evaluative report by a DOE-contractor psychiatrist (DOE Psychiatrist) have been cited by the Local Security Office (LSO) as constituting derogatory information casting doubt as to the Individual's eligibility to possess a security clearance. In 1999, the Individual left his previous place of employment after being accused of permitting a fellow employee to improperly focus a security camera on a female customer. In 2001, the Individual was relieved from a probationary position when he left work to attend to his pregnant wife. In early 2003, during his present employment, the Individual failed a test of an integral job function. After failing the job function test, he was removed for retraining, interviewed by the LSO, and referred to a DOE consulting psychiatrist for evaluation. In July 2003, the Individual was accused of allowing an unauthorized person access into a restricted area.

^{1/} 10 C.F.R. Part 710, Subpart A.

^{2/} 10 C.F.R. § 710.5(a).

After interviewing the Individual and reviewing his Personnel Security File, the DOE Psychiatrist wrote an evaluative report describing his findings.^{3/} He opined that the Individual exhibits a significant defect in his reliability and judgment.^{4/} The DOE Psychiatrist's opinion was based on the interview, the Individual's Personnel Security File, and an earlier psychiatric evaluation conducted in 2002. The DOE Psychiatrist diagnosed the Individual with an

[o]ccupational [p]roblem. This condition is not a mental illness or psychiatric disorder per se; it indicates a condition that is a focus of clinical attention. This may include conditions such as job dissatisfaction or uncertainty about careers, and can be manifested by mistakes at work, accident proneness, absenteeism and in some instances sabotage.^{5/}

The DOE Psychiatrist continued that the Individual only seems to show signs of problems at work.^{6/} The DOE Psychiatrist noted that the workplace incidents cited above supported his determination with regard to his determination that the Individual suffered from an "Occupational Problem."

Because the derogatory information concerning the Individual had not been resolved, the LSO initiated this administrative review proceeding. The LSO issued a Notification Letter to the Individual, citing the incidents described above as derogatory information that created a substantial doubt as to the Individual's eligibility for an access authorization under Criterion H.^{7/} Criterion H refers to information indicating that an individual has "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability."^{8/} Upon receipt of the Notification Letter, the Individual requested a hearing. The DOE sent

^{3/} DOE Ex. 10.

^{4/} *Id.* at 7.

^{5/} DOE Ex. 10 at 6.

^{6/} *Id.*

^{7/} 10 C.F.R. § 710.8(h).

^{8/} *Id.*

the hearing request to the OHA, and the OHA Director appointed me as the Hearing Officer in this case.^{9/} I convened a hearing in this matter.^{10/}

At the hearing, the Individual was represented by an attorney. He offered his own testimony as well as the testimony of two supervisors and a state-licensed psychologist. The Local Security Office presented one witness, the DOE Psychiatrist. The local DOE Office entered 27 exhibits into the record. The Individual entered five exhibits.

II. Standard of Review

Under Part 710, DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility."^{11/} After a question concerning an individual's eligibility for an access authorization has been properly raised, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest."^{12/}

In considering the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in the regulations: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors.^{13/} After consideration of all the relevant information in the record, I conclude that no significant security concern was raised by the derogatory information. Consequently, it is my decision that the Individual's access authorization should be restored.

^{9/} 10 C.F.R. § 710.25(a), (b).

^{10/} 10 C.F.R. § 710.25(g).

^{11/} 10 C.F.R. § 710.10(a).

^{12/} See 10 C.F.R. § 710.27(a).

^{13/} 10 C.F.R. § 710.7(c)

III. The Hearing

At the hearing, the DOE Psychiatrist confirmed the diagnosis that the Individual suffered from a condition specified as an “Occupational Problem” in his report. He based his analysis on information that he had at the time of the evaluation. When asked if the employment incidents at issue could be mistakes, the DOE Psychiatrist opined that the incidents involving the Individual were too many events to have been simply mistakes.^{14/} The DOE Psychiatrist continued that the Individual’s occupational problems would impact on his ability to function in his job capacity.^{15/} He stated that it would also impact his judgment and reliability in performing his job.^{16/} The DOE Psychiatrist noted in this regard that the Individual had been previously diagnosed by two different psychologists as having a dependent personality.^{17/} A person with a dependent personality would not be assertive enough to enforce rules, regulations, and laws. The DOE Psychiatrist stated that a person with a dependent personality seeks to please other people. The DOE Psychiatrist opined that a person with a dependent personality would not be suited to work in the Individual’s profession.

The Individual’s direct supervisor testified. She testified that she has been the Individual’s direct supervisor for about one year.^{18/} The direct supervisor testified that the Individual is very attentive to detail and cares about his job.^{19/} The supervisor believes that the Individual has made mistakes.^{20/} She believes, however, that he learns from his mistakes.^{21/} The supervisor testified that while many people make “mistakes” in their profession, she has never seen anyone else lose his or her security clearance for the type of incidents cited by the LSO.^{22/}

^{14/} Transcript of Hearing (Hearing Tr.) at 29-30.

^{15/} *Id.* at 28.

^{16/} *Id.*

^{17/} *Id.* at 30.

^{18/} *Id.* at 71.

^{19/} *Id.*

^{20/} *Id.* at 80.

^{21/} *Id.*

^{22/} *Id.* at 73, 82-84.

The Individual's other direct supervisor also testified on his behalf. He testified that the Individual is "pretty good" at his job.^{23/} He has not had any issues with the Individual.^{24/} He further stated that the Individual performed "fine" in his job since June or July 2003, when he began supervising him.^{25/}

The Individual testified on his own behalf. With regard to the 1999 employment incident, he explained that he quit the job where he was accused of permitting a fellow employee to use a security camera to focus on a female customer.^{26/} The Individual believed he was unfairly questioned about the incident, especially in light of the fact that another person who was present at the time of the incident was not questioned.^{27/}

With regard to the 2001 employment incident, he was told he was being terminated because it "wasn't working out."^{28/} Because he was a probationary employee, he testified that his employer did not need to give him a reason for the termination.^{29/} He believes the actual reason for his termination from this position was that he took time off to be with his wife and newborn son.

The Individual also testified about the 2003 events which led to his being interviewed by the DOE Psychologist. The individual testified that after he and another employee failed a test of an integral job function, they were removed for retraining.^{30/} At that time, no one raised a question about his security clearance.^{31/} Concerning the subsequent July 2003 incident where the Individual was accused of allowing an unauthorized person into a restricted area, the Individual stated that he did not remember allowing the unauthorized person access to the restricted area.^{32/} He also testified that the person who gained access,

^{23/} *Id.* at 89.

^{24/} *Id.* at 94.

^{25/} *Id.* at 94.

^{26/} *Id.* at 105.

^{27/} *Id.*

^{28/} *Id.* at 100.

^{29/} *Id.*

^{30/} *Id.* at 110.

^{31/} *Id.*

^{32/} *Id.* at 110, 111.

when questioned at the time of the incident, indicated that he had asked for directions to a specific building and that the Individual had given them to him.^{33/} The Individual testified that he did not remember giving directions to anyone that day to that building.^{34/} The Individual also testified that after this incident, he was put on investigative leave and escorted away from work.^{35/} He had no knowledge anyone else ever being accused of this infraction under similar circumstances.^{36/}

Finally, a psychologist testified on behalf of the Individual.^{37/} Unlike the DOE consulting psychiatrist, the Individual's psychologist found no diagnosable psychiatric disorder.^{38/} He testified that the Individual did possess some dependent features, but that he believes that those features would lead the Individual to try to please his supervisor and employer.^{39/} Such dependent tendencies would make the Individual loyal to his profession and employer.^{40/} The Individual's psychologist did not find the Individual to be unreliable.^{41/} The Individual's psychologist did not find evidence to sustain a finding that the Individual had a significant defect in judgment and reliability.^{42/}

The DOE Psychiatrist was recalled after listening to all the testimony. Upon reflection, he changed his opinion and does not now believe that the Individual has an "occupational problem." Based upon the testimony of the Individual, his supervisors, and his psychologist, the DOE psychiatrist also stated that the Individual does not currently show a lack of reliability or judgment.^{43/}

^{33/} *Id.*

^{34/} *Id.*

^{35/} *Id.* at 118.

^{36/} *Id.*

^{37/} *Id.* at 119.

^{38/} *Id.* at 121.

^{39/} *Id.* at 130.

^{40/} *Id.*

^{41/} *Id.* at 126.

^{42/} *Id.* at 122.

^{43/} *Id.* at 133.

IV. Findings and Conclusions

After reviewing the testimony presented in this case as well as the other evidence contained in the record, I find that the Individual does not have an illness or mental condition which causes or may cause a significant defect in judgment or reliability, so as to raise a security concern.

The Individual's witnesses testified that he is good at his occupation. He is diligent, learns quickly, and is attentive to detail. His supervisors indicated that many people in their department make mistakes. The Individual's psychologist has determined that the Individual has no diagnosable mental disorder. He also testified that although the Individual does exhibit some signs of a dependent personality, he sees this as a positive element that would have the Individual exhibit loyalty to his employer. Upon review of the additional evidence presented at the hearing, the DOE Psychiatrist no longer believes that the Individual suffers from an "Occupational Problem" and does not show a lack of judgment or reliability.

In sum, I was convinced by the expert testimony and the testimony of the Individual's witnesses. The employment incidents cited by the LSO appear to be isolated mistakes or failures in job performance. Most significantly, neither expert now finds that the Individual suffers from a mental illness or condition that could affect judgment or reliability. To the extent the DOE Psychiatrist's report and the other cited Criterion H information raised a security concern, I find that concern has been mitigated.

V. Conclusion

Upon consideration of the record in this case, I find that Criterion H security concerns regarding the Individual's eligibility for a security clearance have been mitigated. Therefore, I conclude that restoring the Individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual's access authorization should be restored.

The review procedures applicable to proceedings under Part 710 were revised effective September 11, 2001. 66 Fed. Reg. 47061 (September 11, 2001). Under the revised procedures, the review is performed by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: December 4, 2006